



General Assembly

***Substitute Bill No. 6536***

*January Session, 2001*

***AN ACT CONCERNING EXECUTION UPON FUNDS IN BANK  
ACCOUNTS WHICH ARE EXEMPT FROM EXECUTION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 52-367b of the general statutes is repealed and the following  
2       is substituted in lieu thereof:

3       (a) Execution may be granted pursuant to this section against any  
4       debts due from any banking institution to a judgment debtor who is a  
5       natural person, except to the extent such debts are protected from  
6       execution by sections 52-352a, 52-352b, 52-352c, of the general statutes  
7       revised to 1983, 52-354 of the general statutes revised to 1983, 52-361 of  
8       the general statutes revised to 1983 and section 52-361a, as well as any  
9       other laws or regulations of this state or of the United States which  
10      exempt such debts from execution.

11      (b) If execution is desired against any such debt, the plaintiff  
12      requesting the execution shall notify the clerk of the court. In a IV-D  
13      case, the request for execution shall be accompanied by an affidavit  
14      signed by the levying officer attesting to an overdue support amount  
15      of five hundred dollars or more which accrued after the entry of an  
16      initial family support judgment. If the papers are in order, the clerk  
17      shall issue such execution containing a direction that the officer  
18      serving the same shall, within seven days from the receipt by the  
19      officer of such execution, make demand (1) upon the main office of any

20 banking institution having its main office within the county of such  
21 officer, or (2) if such main office is not within such officer's county and  
22 such banking institution has one or more branch offices within such  
23 county, upon an employee of such a branch office, such employee and  
24 branch office having been designated by the banking institution in  
25 accordance with regulations adopted by the Commissioner of Banking  
26 in accordance with chapter 54, for payment of any such nonexempt  
27 debt due to the judgment debtor and, after having made such demand,  
28 shall serve a true and attested copy of the execution, together with the  
29 affidavit and exemption claim form prescribed by subsection (k) of this  
30 section, with [his] such officer's doings endorsed thereon, with the  
31 banking institution officer upon whom such demand is made.

32 (c) If any such banking institution upon which such execution is  
33 served and upon which such demand is made is indebted to the  
34 judgment debtor, it shall remove from the debtor's account the amount  
35 of such indebtedness not exceeding the amount due on such execution  
36 before its midnight deadline, as defined by section 42a-4-104.  
37 Notwithstanding the provisions of this subsection, if electronic direct  
38 deposits that are readily identifiable as exempt government benefits  
39 payments were made to the judgment debtor's account during the  
40 thirty-day period preceding the date that the execution was served on  
41 the banking institution, then a banking institution shall, except to the  
42 extent prohibited by a court order, leave funds in the amount of one  
43 thousand dollars in the judgment debtor's account. The judgment  
44 debtor shall have access to such funds left in the judgment debtor's  
45 account pursuant to this subsection. Nothing in this subsection shall  
46 alter the exempt status of funds which are exempt from execution  
47 under subsection (a) of this subsection or under any other provision of  
48 state or federal law, or the right of a judgment debtor to claim such  
49 exemption.

50 (d) Upon receipt of the execution and exemption claim form from  
51 the serving officer, the banking institution shall forthwith mail copies  
52 thereof, postage prepaid, to the judgment debtor at [his] the judgment  
53 debtor's last known address with respect to the affected accounts on

54 the records of the banking institution. The institution shall hold the  
55 amount removed from the debtor's account pursuant to subsection (c)  
56 of this section for fifteen days from the date of the mailing to the  
57 judgment debtor and during such period shall not pay the serving  
58 officer.

59 (e) To prevent the banking institution from paying the serving  
60 officer, as provided in subsection (h) of this section, the judgment  
61 debtor shall give notice of a claim of exemption by delivering to the  
62 banking institution, by mail or other means, the exemption claim form  
63 or other written notice that an exemption is being claimed. The  
64 banking institution may designate an address to which the notice of a  
65 claim of exemption shall be delivered. Upon receipt of such notice, the  
66 banking institution shall, within two business days, send a copy of  
67 such notice to the clerk of the court which issued the execution.

68 (f) Upon receipt of an exemption claim form, the clerk of the court  
69 shall enter the appearance of the judgment debtor with the address set  
70 forth in the exemption claim form. The clerk shall forthwith send file-  
71 stamped copies of the form to the judgment creditor and judgment  
72 debtor with a notice stating that the disputed assets are being held for  
73 forty-five days from the date the exemption claim form was received  
74 by the banking institution or until a court order is entered regarding  
75 the disposition of the funds, whichever occurs earlier, and the clerk  
76 shall automatically schedule the matter for a short calendar hearing.  
77 The claim of exemption filed by such debtor shall be prima facie  
78 evidence at such hearing of the existence of the exemption.

79 (g) If an exemption claim is made pursuant to subsection (e) of this  
80 section, the banking institution shall continue to hold the amount  
81 removed from the judgment debtor's account for forty-five days or  
82 until a court order is received regarding disposition of the funds,  
83 whichever occurs earlier. If no order is received within forty-five days  
84 of the date the banking institution sends a copy of the exemption claim  
85 form or notice of exemption to the clerk of the court, the banking  
86 institution shall return the funds to the judgment debtor's account.

87 (h) If no claim of exemption is received by the banking institution  
88 within fifteen days of the mailing to the judgment debtor of the  
89 execution and exemption claim form pursuant to subsection (d) of this  
90 section, the banking institution shall, upon demand, forthwith pay the  
91 serving officer the amount removed from the judgment debtor's  
92 account, and the serving officer shall thereupon pay such sum, less  
93 [his] such officer's fees, to the judgment creditor, except to the extent  
94 otherwise ordered by a court.

95 (i) The court, after a hearing conducted pursuant to subsection (f) of  
96 this section, shall enter an order determining the issues raised by the  
97 claim of exemption. The clerk of the court shall forthwith send a copy  
98 of such order to the banking institution. Such order shall be deemed to  
99 be a final judgment for the purposes of appeal. No appeal shall be  
100 taken except within seven days of the rendering of the order. The order  
101 of the court may be implemented during such seven-day period,  
102 unless stayed by the court.

103 (j) If both exempt and nonexempt moneys have been deposited into  
104 an account, for the purposes of determining which moneys are exempt  
105 under this section, the moneys most recently deposited as of the time  
106 the execution is levied shall be deemed to be the moneys remaining in  
107 the account.

108 (k) The exemption claim form, execution and clerk's notice  
109 regarding the filing of a claim of exemption shall be in such form as  
110 prescribed by the judges of the Superior Court or their designee. The  
111 exemption claim form shall be dated and include a checklist and  
112 description of the most common exemptions, instructions on the  
113 manner of claiming the exemptions, and a space for the judgment  
114 debtor to certify those exemptions claimed under penalty of false  
115 statement.

116 (l) If records or testimony are subpoenaed from a banking  
117 institution in connection with a hearing conducted pursuant to  
118 subsection (f) of this section, the reasonable costs and expenses of the

119 banking institution in complying therewith shall be recoverable by it  
120 from the party requiring such records or testimony, provided, the  
121 banking institution shall be under no obligation to attempt to obtain  
122 records or documentation relating to the account executed against  
123 which are held by any other banking institution. The records of a  
124 banking institution as to the dates and amounts of deposits into an  
125 account in such institution shall, if certified as true and accurate by an  
126 officer of the banking institution, be admissible as evidence without  
127 the presence of the officer in any hearing conducted pursuant to  
128 subsection (f) of this section to determine the legitimacy of a claim of  
129 exemption made under this section.

130 (m) If there are moneys to be removed from the debtor's account,  
131 prior to the removal of such moneys pursuant to subsection (c) of this  
132 section the banking institution shall receive from the serving officer as  
133 representative of the judgment creditor a fee of eight dollars for its  
134 costs in complying with the provisions of this section which fee may be  
135 recoverable by the creditor as a taxable cost of the action.

136 (n) If the banking institution fails or refuses to pay over to the  
137 serving officer the amount of such debt, not exceeding the amount due  
138 on such execution, such banking institution shall be liable in an action  
139 therefor to the judgment creditor named in such execution for the  
140 amount of nonexempt moneys which it failed or refused to pay over,  
141 [and the] excluding funds in the amount of one thousand dollars  
142 which the banking institution allowed the judgment debtor to access  
143 pursuant to subsection (c) of this section. The amount so recovered by  
144 such judgment creditor shall be applied toward the payment of the  
145 amount due on such execution. Thereupon the rights of the banking  
146 institution shall be subrogated to the rights of the judgment creditor. If  
147 such banking institution pays exempt moneys from the account of the  
148 judgment debtor over to the serving officer contrary to the provisions  
149 of this section, such banking institution shall be liable in an action  
150 therefor to the judgment debtor for any exempt moneys so paid and  
151 such banking institution shall refund or waive any charges or fees,  
152 including, but not limited to, dishonored check fees, overdraft fees or

153 minimum balance service charges and legal process fees, which were  
154 assessed as a result of such payment of exempt moneys. Thereupon the  
155 rights of the banking institution shall be subrogated to the rights of the  
156 judgment debtor.

157 (o) Except as provided in subsection (n) of this section, no banking  
158 institution or any officer, director or employee thereof shall be liable to  
159 any person with respect to anything done or omitted in good faith in  
160 complying with the provisions of this section.

161 (p) Nothing in this section shall in any way restrict the rights and  
162 remedies otherwise available to a judgment debtor at law or in equity.

163 (q) Nothing in this section shall in any way affect any rights of the  
164 banking institution with respect to uncollected funds credited to the  
165 account of the judgment debtor, which rights shall be superior to those  
166 of the judgment creditor.

167 (r) For purposes of this subsection, "exempt" shall have the same  
168 meaning as in subsection (c) of section 52-352a. Funds deposited in an  
169 account that has been established for the express purpose of receiving  
170 electronic direct deposits of public assistance payments from the  
171 Department of Social Services shall be exempt.

**JUD**      *Joint Favorable Subst.*

**BA**        *Joint Favorable*